

Decision 01-11-030 November 8, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's own motion into the Operations and practices of Bidwell Water Company and its Owners and Operators, Thomas and Vicki Jernigan, and Order to Show Cause why findings should not be entered by the Commission under Pub. Util. Code § 855.

Investigation 01-10-002  
(Filed October 2, 2001)

**INTERIM OPINION DENYING  
BIDWELL WATER COMPANY'S APPEAL  
TO RECATEGORIZE PROCEEDING**

**1. Summary**

This decision denies the appeal of Bidwell Water Company and its owners and operators (Bidwell) pursuant to Pub. Util. Code § 1701.1(a) and Commission Rule 6.4 of the categorization of this investigation as a "ratesetting" proceeding. Bidwell claims this proceeding should be categorized as "adjudicatory" pursuant to Section 1701.1(c)(2). We find that this proceeding does not fit neatly into any of the three categories for proceedings set forth in Section 1701.1(a)-(c). Pursuant to Commission Rule 6.1(c), when a proceeding does not clearly fit into any of the categories, the proceeding will be conducted under the rules applicable to the ratesetting category. We therefore uphold the "ratesetting" categorization for this proceeding.

## 2. Background

This proceeding is an investigation into whether, pursuant to Pub. Util. Code § 855, Bidwell and its individual owners are unwilling or unable adequately to serve Bidwell's ratepayers; contemplate abandoning the water system they control; and have been unresponsive to Commission orders. The Commission seeks an order from the California civil courts imposing a receivership on Bidwell.

The Order Instituting Investigation (OII) that commenced this proceeding makes the following assertions regarding categorization of the proceeding:

This proceeding is categorized as a ratesetting proceeding and is set for hearing solely on the order to show cause [why the Commission should not make findings under Pub. Util. Code § 855 and proceed to court to seek appointment of a receiver for Bidwell]. This matter is not an enforcement proceeding, as Respondents will not be made subject hereby to fines or other enforcement penalties *imposed by the Commission*. Its purpose and effect are thus limited to determining whether the next step should be pursued in the statutorily designated court.<sup>1</sup>

Bidwell claims that the proceeding should be recategorized as adjudicatory because it “involves an attempt at enforcement of alleged violations of the Commission orders.”<sup>2</sup>

## 3. Discussion

We agree that this proceeding should be categorized as a ratesetting proceeding, principally because the case does not fit easily in any category. The

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<sup>1</sup> OII at 8 (emphasis added).

<sup>2</sup> *Appeal to Recategorize Proceedings*, filed Oct. 26, 2001, at 2.

proceeding does not fit the “adjudicatory” mold because it does not involve a *Commission* proceeding to enforce penalties. Rather, the proceeding will take place in court. There, the Commission will seek appointment of a receiver to take over the operations of Bidwell.

Under Pub. Util. Code §1701.1(c)(2), adjudication cases “are enforcement cases and complaints. . . .” While neither the statute nor Commission rules on the subject require that the “enforcement” take place at the Commission, such a requirement appears reasonable. If the Commission is merely investigating a matter, with all remedies and substantive proceedings intended for civil court, the categorization is less clear. Where proper categorization is unclear, we use the ratesetting category.

We disagree with Bidwell that the mere fact that this proceeding does not involve the setting of rates settles the question of categorization. Commission Rule 6.1(c) provides that:

when a proceeding does not clearly fit into any of the categories as defined in Rules 5(b), 5(c), and 5(d), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.

Pursuant to Rule 6.1, we find that the ratesetting category is appropriate here, and decline to determine that the rules applicable to one of the other categories, or a hybrid of the rules, are best suited to this proceeding.

#### **4. Waiver of Comment Period**

In accordance with Pub. Util. Code § 311(g)(3), this is not a decision requiring that the Commission solicit comment from the parties because it relates to the categorization of the proceeding.

#### **Findings of Fact**

1. In this proceeding, the Commission seeks court-ordered appointment of a receiver for Bidwell pursuant to Pub. Util. Code § 855.
2. The Commission does not seek to impose penalties or take other enforcement action against Bidwell in a proceeding before this Commission.
3. This proceeding does not clearly fit into any of the three categories.

#### **Conclusions of Law**

1. This Commission has discretion pursuant to Rule 6.1 of its Rules to categorize this proceeding in the manner most suitable to the circumstances of this proceeding.
2. The ratesetting category is appropriate where a proceeding does not clearly fit into the adjudicatory, ratesetting or quasi-legislative categories.
3. This proceeding should be categorized as ratesetting.

### **INTERIM ORDER**

IT IS ORDERED that the appeal of Bidwell Water Company and its owners and operators pursuant to Public Utilities Code Section 1701.1(a) and Commission Rule 6.4 of the categorization of this investigation as a “ratesetting”

proceeding is denied. This proceeding shall continue to be categorized as a “ratesetting” proceeding.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

Commissioner Henry M. Duque, being  
necessarily absent, did not participate.